**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929**

**WP(C).No. 16935 of 2007(N)**
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**PETITIONER:**
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**JOHN ABRAHAM, S/O. ABRAHAM,**
**AGED 55 YEARS AND RESIDING AT POIKKATTIL HOUSE,**
**PINDIMANA KARA, PINDIMANA VILLAGE,KOTHAMANGALAM.**

**BY ADV. SRI.PAUL K.VARGHESE**

**RESPONDENTS:**
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**1. PINDIMANA GRAMA PANCHAYATH,**
**PINDIMANA, KOTHAMANGALAM REP. BY SECRETARY.**

**2. THE PRESIDENT,**
**PINDIMANA GRAMA PANCHAYATH, PINDIMANA,**
**KOTHAMANGALAM.**

**3. THE SECRETARY,**
**PINDIMANA GRAMA PANCHAYATH, PINDIMANA,**
**KOTHAMANGALAM.**

**BY ADV. SRI.P.SANTHALINGAM**
**SRI.S.SHARAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K. M. JOSEPH, J.**

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**W.P.C. NO. 16935 OF 2007 N**

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**Dated this the 20th June, 2007**

**JUDGMENT**

Case of the petitioner, in brief, is as follows:

Petitioner is the absolute owner in possession of 02.53 Ares of property in Survey No.639/1 of Pindimana Village. It originally belonged to one K.K. Varghese, who died intestate and from the legal heirs of the said K.K. Varghese, petitioner purchased the property. Shri K. K. Varghese applied for electric connection on 28.4.1966. The building was also numbered by the Secretary years back. According to petitioner, he and his predecessor in interest have been in exclusive uninterrupted possession and enjoyment of the property and the building therein. It is stated that on 2.6.2007 at 8 P.M., the third respondent Secretary, issued Ext.P8 notice directing the petitioner to demolish the building within twentyfour hours, otherwise, they will demolish the same by force. The said order was passed without hearing the petitioner and giving an

opportunity of being heard and in violation of the Kerala Panchayatraj Act. This Court stayed the demolition proceedings pursuant to Ext.P8 on 4.6.2007.

2. A Counter Affidavit is filed by the respondent Panchayat wherein it is, inter alia, stated that the Additional Tahsildar issued notice to the petitioner on 28.4.2007 stating that the property of the petitioner should be surveyed by the Taluk Surveyor, Kothamangalam. On 9.5.2007, the Taluk Surveyor surveyed and marked the property of the petitioner in his presence and explained to the petitioner that the said property is included in the puramboke land. On 28.4.2007 itself the petitioner received notice about the matter and after that, on 9.5.2007 it is made clear that the marked area is puramboke land encroached by the petitioner and he did not lodge any complaint at that time. The notice for demolition was served on 2.6.2007. The petitioner was well aware of the fact of encroachment from 28.4.2007 itself. Petitioner has already removed all his belongings and things from the building so many days before

the demolition by anticipating demolition. It is stated that 3/4th of the building has already been demolished even before the stay order. Petitioner filed O.S. No.70/07 before the Sub Court, muvattupuzha. Reliance is placed on Ext.R1(a) Circular dated 2.8.2006. The Village Officer issued Ext.R1(b) Certificate showing that the petitioner has encroached upon the puramboke property. The Taluk Surveyor at the instance of the Tahsildar surveyed and marked the land and at the time of marking, the petitioner and his representative were present.

3. A Reply Affidavit has been filed, pointing out that Ext.R1(b) Report , inter alia, says that the petitioner is the owner of the property having an extent of 6.250 cents of land with Thandaper No. 4066 and land tax was received from the petitioner. It is pointed out that none of the Government Officials including the Panchayat complied with any of the laws, and violating the procedure including the Panchayatraj Act, the respondent Panchayat issued Ext.P8 notice illegally and made certain damage to the petitioner's building. Lakhs of Rupees

were suffered as damage, apart from mental agony and the petitioner is reserving his right to avail appropriate legal remedies. Ext.P8 proceedings is clearly an infringement of fundamental right guaranteed under Article 21 of the Constitution of India, it is stated.

4. I heard Shri Paul K. Varghese, learned counsel for the petitioner, Shri P. Santhalingam, learned counsel appearing on behalf of the respondent Panchayat, besides the learned Government Pleader.

5. Learned counsel for the respondent Panchayat proceeds on the basis that the property in question is vested in the Panchayat. If the property is vested in the Panchayat, petitioner would become an encroacher. If that is so, the Kerala Panchayat Raj (Removal of Encroachment and Imposition & Recovery of Penalty for Unauthorised Occupation) Rules, 1996 would become applicable. Rules 4 and 5 are relevant. Rule 4 provides for eviction of unauthorised occupants. Rule 5 provides for the procedure for eviction. It speaks of serving fifteen days'

notice to the occupant before evicting the person from the land belonging to or vested with the Panchayat. It further categorically provides for a brief description of the land unauthorisedly occupied and the reasons for the eviction are to be specifically stated in the Notice. Sub-rules (2) and (3) of Rule 5 read as follows:

> *"(2) The Panchayat shall examine the objection if any, received, to the notice mentioned under sub-rule (1). If it appears to the Panchayat that the objection is not satisfactory or the matters stated therein are unsustainable in law, a second notice shall be served to the occupant and he shall be required therein to vacate the unauthorisedly occupied land within one week after the receipt of the notice.*
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> *(3) If the unauthorised occupant is not vacating even after the receipt of notice mentioned under sub-rule (2) the Panchayat may evict such person and if assistance of*

> *police is required for this purpose the assistance of police may be sought under sub-section (1) of Section 352 of the Act and the police shall provide assistance."*

The person concerned, if he is so advised, is entitled to prefer an Appeal before the Tribunal and pursue his remedies if he is also aggrieved by the order of the Tribunal. Admittedly, the respondent Panchayat has not issued any notice as contemplated in Rules 4 and 5. It is to be noted that in fact, the Revenue Officials have issued notice to the petitioner. That is a matter which is engaging the attention of the Sub Court, Moovattupuzha in OS No.70/07. Apparently, the notice was issued under Section 11(3). In view of the decision of a Division Bench of this Court in Vathsan v. Government of Kerala & Others (2002 (3) ILR 245), it is clear that in respect of property which is claimed to be vested with the Panchayat under Section 169, it is the Panchayat which is the authority as enunciated by the Division Bench. Then Shri P. Santhalingam,

learned counsel for the respondents referred to Ext.R1 (a) Circular dated 2.8.2006 as per which the Panchayat Officials are permitted to seek the aid of the Revenue Officials for the purpose of measurement of properties which are vested in the Panchayat for the purpose of ascertaining encroachment. He would rely on Section 275(2) of the Panchayatraj Act and also Section 194 of the Act to point out that the Government Officials have right to take a decision in the matter. As far as Section 194 of the Panchayat Raj Act is concerned, it reads as follows:

> *"**194. Powers of Officers taking action on behalf of or in default of Panchayat and liability of Panchayat Fund.** - The Government, or any other Officer lawfully taking action on behalf, or in default, of a Panchayat under this Act shall have all such powers as are necessary for the purpose and shall be entitled to the same protection under this Act as the Panchayat or its employees whose powers are exercised; and compensation shall be recoverable from the Panchayat's fund by any person suffering damage*

> *from the exercise of such powers to the same extent, as if the action had been taken by the Panchayat or its employees."*

According to me, that is a provision which only enumerates the powers available to the Government or any other Officer lawfully taking any action in default of the Panchayat or on behalf of the Panchayat. That Section itself is not the source of the power of the Government or other Officers. Section 275(2) apparently confers power. It reads as follows:

> *"275(2): The Government may, by notification, authorise any Officer to exercise in any Panchayat in each district or any class of Panchayats or all Panchayats any power vested by this Act or the rules made thereunder and may in like manner withdraw such authorisation."*

But, there is no Notification as such produced before me by the Panchayat empowering the Officer to take the place of the Village Panchayat under Rules 4 and 5 of the Rules. Ext.R1(a) is a Circular and the limited purport of which is to help the

Panchayat Officers in the matter of carrying out survey. The Officer cannot take the place of the Village Panchayat for the purpose mentioned in Rule 5 of the Rules which I have already extracted. Learned counsel also pointed out that the Notice mentioned in Rule 5 can even be an oral Notice. I have no difficulty in rejecting the argument, having regard to the wording in Rule 5 which is that the Notice shall contain brief description of the property and reasons for proceeding under Rule 5. I do not think that the Section provides for an oral notice and the acceptance of any such interpretation will have a dangerous portent as it will lead to both confusion, making the Rule unworkable besides making unreasonable. Therefore, there must be a written notice in compliance with the said Rule which will be the starting point for a proceeding for ordering demolition/recovery. The upshot of this discussion is that Ext.P8 calling upon the petitioner to demolish and giving twentyfour hours' time is palpably illegal, as it was not preceded by the compliance with the provisions of Rule 5. In such

circumstances, Ext.P8 does not have any legs 7 to stand on and Ext.P8 is quashed leaving it open to the respondent Panchayat, if it is so advised, to take proceedings in accordance with law as already indicated above.

The Writ Petition is allowed as above.

**K. M. JOSEPH, JUDGE**

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